

UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA,

Plaintiff,

-against-

Index No.  
18-cv-6840  
ENV-CLP

WALTER SCHILLER and DENISE SCHILLER.

Defendants.  
-----X

DEFENDANTS' CONSENT MOTION FOR LEAVE TO  
FILE A SECOND AMENDED ANSWER

Defendants hereby move the Court for leave to amend their Answer, pursuant to Fed. R. Civ. P. 15(a)(2) to add paragraph Eighth as an additional Affirmative Defense. Filed simultaneously with this Motion is the proposed Second Amended Answer with paragraph Eighth. Defendants have conferred with Plaintiff regarding the filing of the Second Amended Answer and the parties have agreed that:

1. Plaintiff consents to Defendants Consent Motion for Leave to file the Second Amended Answer, a copy of which accompanies this Motion.
2. Plaintiff and Defendant will respond to any additional discovery requests on a schedule as determined by the Court.

So Ordered  
C. /s/ Cheryl Pollak - USMT  
8/26/19

Respectfully submitted,

  
Larry Kars, Esq. (LK0827)  
Attorney for Defendants  
233 Broadway, Suite 2340  
New York, NY 10279  
Tel: 212-233-3800  
FAX: 212-233-3801  
larrykarslaw@gmail.com

To:  
W.Damon Dennis, Esq.  
Trial Attorney, Tax Division  
U.S. Department of Justice  
P.O. Box 55  
Washington, D.C. 20044

**CERTIFICATE OF SERVICE**

I, Larry Kars, Attorney for the Defendants, hereby certify that on August 2019, a copy of the foregoing Defendants Second Amended Answer to be sent by Priority First Class Mail charges pre-paid, to the following:

W.Damon Dennis, Esq.  
Trial Attorney, Tax Division  
U.S. Department of Justice  
P.O. Box 55  
Washington, D.C. 20044

Dated: New York, New York  
August 20, 2019

UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

-against-

AMENDED ANSWER

Index No.  
18-cv-6840  
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Defendants.  
-----X

*Second*  
**AMENDED ANSWER**

Defendants, Walter Schiller and Denise Schiller, pursuant to Federal Rules of Civil Procedure 15(a)(1)(A), by their attorney Larry Kars, Esq., as and for their Amended Answer to the Complaint, respectfully alleges as follows:

**Preliminary Statement**

Defendants have been unable to obtain many necessary facts and documents to adequately review, answer and defend the allegations in the complaint. This is due in part to the Government and Internal Revenue Service (IRS) shutdown. The IRS was not responding or accepting powers of attorney in order for defendants to obtain transcripts of account showing the defendants' and plaintiff's activities for the relevant tax periods involved.

In addition, immediately prior to the complaint being filed, a Revenue Officer of the IRS, C. Lomax, visited the defendants and retrieved, seized and stole many documents previously sent to the defendants by the IRS and documents sent by defendants to the IRS. C. Lomax promised to return those documents to the defendants presumably after making copies, but he never returned the documents to defendants and has willfully retained those documents

without the defendants' consent and to their detriment.

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 1 of the complaint.
2. Admits the allegation contained in paragraph 2 of the complaint
3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the complaint.
4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 4 of the complaint.
5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of the complaint.
6. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 6 of the complaint.
7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of the complaint.
8. Defendants hereby deny all other allegations in the complaint not heretofore denied.

**FIRST AFFIRMATIVE DEFENSE**

9. The complaint fails to state a cause of action against defendants upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

10. Defendants assert any and all statute of limitations as a complete defense to some or all claims.

**THIRD AFFIRMATIVE DEFENSE**

11. Part of the unpaid interest charges are, on information and belief, due to delays caused by plaintiff and should be abated.

**FOURTH AFFIRMATIVE DEFENSE**

12. Part of the interest and penalties charged by plaintiff are, on information and belief, inaccurate and due to reasonable cause and should be abated.

**FIFTH AFFIRMATIVE DEFENSE**

13. Plaintiff's claims are barred by the doctrine of consent and waiver in that the parties had agreed to monthly installment payments which payments have been consistently made and accepted by plaintiff.

**SIXTH AFFIRMATIVE DEFENSE**

14. Plaintiff's claims are barred by the doctrine of laches in that defendants relied on the installment agreement to their detriment and prejudice, and the plaintiff's delay in acting on the installment agreement was inexcusable; such delay lasted approximately eleven (11) months.

**SEVENTH AFFIRMATIVE DEFENSE**

15. Plaintiff's termination of the installment agreement and delay in reviewing it was an abuse of their discretion. Plaintiff had placed defendants in "non-collectible" status for several months but defendants continued to make monthly payments to plaintiff; due to a lack of assets, the inability to borrow on any home equity, severe medical problems of defendant Denise Schiller, defendants could not full pay the balance due on their tax liability.

**EIGHTH AFFIRMATIVE DEFENSE**

16. On information and belief, the Internal Revenue Service wrongfully referred this case to the Department of Justice for commencement of proceedings in Court against Defendants, persons named in a proposed installment agreement, when levy to collect the liability was prohibited by Regulation Sec. 301.6331-4(a) and as stated in Regulation Sec. 301-6331-4(b)(2); and Code Sec. 6331(k) (2) (B). On August 7, 2018, IRS Revenue Officer C. Lomax stated in a written communication to the Defendants that:“ ..Levy. Suit to Reduce Claim to Judgement in Process,” which date was during the prohibited period. The prohibited period began on or about December7, 2017 when the Plaintiff received the request for an installment agreement and ended October30. 2018, the date of the letter of rejection was sent to Defendants, plus 30 days thereafter. C. Lomax reviewer also approved the rejection of the installment agreement on October 3, 2018.

WHEREFORE, Defendants respectfully demands judgment dismissing Plaintiff's complaint in its entirety, awarding Defendants the costs of this litigation, and such further relief as the Court deems just and proper.

Dated: New York, New York  
August 20, 2019

  
Larry Kars, Esq. (LK0857)  
Attorney for Defendants  
233 Broadway, Suite 2340  
New York, NY 10279  
Tel: 212-233-3800  
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To:  
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Washington, D.C. 20044

## Motions

1:18-cv-06840-ENV-CLP United  
States of America v. Schiller et al

ACO

U.S. District Court

Eastern District of New York

## Notice of Electronic Filing

The following transaction was entered by Kars, Larry on 8/20/2019 at 11:56 AM EDT and filed on 8/20/2019

Case Name: United States of America v. Schiller et al

Case Number: 1:18-cv-06840-ENV-CLP

Filer: Denise Schiller  
Walter Schiller

Document Number: 13

### Docket Text:

**MOTION to Amend/Correct/Supplement Answer by Denise Schiller, Walter Schiller. (Attachments: # (1) Exhibit Amended Answer) (Kars, Larry)**

**1:18-cv-06840-ENV-CLP Notice has been electronically mailed to:**

James Yu james.yu@usdoj.gov, northern.taxcivil@usdoj.gov

Larry Kars lkars@gerstensavage.com

Wallace D. Dennis w.damon.dennis@usdoj.gov, dawn.ashton@usdoj.gov, northern.taxcivil@usdoj.gov,  
wddennis3@gmail.com

**1:18-cv-06840-ENV-CLP Notice will not be electronically mailed to:**

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP NYEDStamp\_ID=875559751 [Date=8/20/2019] [FileNumber=14163399-0]  
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Document description:Exhibit Amended Answer

Original filename:n/a

Electronic document Stamp:

[STAMP NYEDStamp\_ID=875559751 [Date=8/20/2019] [FileNumber=14163399-1]  
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